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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Ervin Middleton Jr.,

Plaintiff

v.

Carrington Mortgage Services, LLC; Ocwen
Loan Servicing, LLC; Clark County
Recorder's Office,

Defendants

Case No.: 2:18-cv-0945-JAD-PAL

**Order Dismissing Action
and Denying Other Motions**

[ECF Nos. 3, 5, 6, 12, 17, 22, 34, 42]

Pro se plaintiff Ervin Middleton Jr. initiated this action by filing a document he entitled "Registration of a Judgment (verified)." ¹ The nature of this action has created great confusion and prolific motion practice. Though Middleton contends that he merely wanted to register judgments to enforce them, the papers he offers aren't court judgments—they're documents by which he purports to have secured consent judgments by default against the Clark County Recorder's Office and lenders Carrington Mortgage Services, LLC and Ocwen Loan Servicing, LLC using an out-of-court notary process with traces of admiralty law and the Uniform Commercial Code.

All defendants move to dismiss this action. Middleton moves for a refund of his filing-fee overcharge, for permission to file electronically, "to allow service of Defendants at its expense," for default against the Recorder's Office, and for judgment on the pleadings. I find all of these motions suitable for resolution without oral argument ² and that Middleton's action is not

¹ ECF No 1.

² L.R. 78-1.

1 one to register judgments or for any plausible claim. So I grant the motions to dismiss and deny
2 all other motions.

3 **Discussion**

4 **A. Middleton's action**

5 Before I can sort out the merits of the many pending motions, I must first determine the
6 nature of this action. The "Registration of a Judgment (verified)," which serves as the initiating
7 document, states that Middleton, "a, Free Man standing on the soil of Nevada state as a Free
8 Inhabitant and member of the body politic the State of Nevada," "hereby register[s] judgments
9 against" these defendants.³ These statements on this front page suggest that the intention of this
10 action was simply to register judgments. So, if I merely stopped reading after the first page, I
11 could conclude that Middleton was just registering judgments.

12 But Middleton also avers in this document that "[t]here is Diversity Jurisdiction over this
13 action" and that "the events gave rise to the Plaintiff's claims occurred inside Nevada,"⁴
14 suggesting that he is invoking the jurisdiction of this court not to merely register a judgment, but
15 to initiate a civil action based on diversity jurisdiction.⁵ Middleton quotes the Full Faith and
16 Credit Clause of the U.S. Constitution⁶ and makes references to the Administrative Procedure
17 Act.⁷ He states that he "is entitled to relief in this equitable claim" and "summary judgment on
18 his administrative remedy," and he "requires the court to order the Defendants to pay" \$577,500,
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21 ³ ECF No. 1.

22 ⁴ *Id.* at 2.

23 ⁵ 28 U.S.C. § 1332.

⁶ U.S. Const. art IV, sec. 1.

⁷ 5 U.S.C. § 551 et seq.

1 \$671,165, and \$660,000, respectively.⁸ These are all hallmarks of a civil action, and because
2 Middleton is asking by this action to do far more than simply register judgments—he’s asking
3 for specific relief from the court—this is not simply a judgment-registration action.

4 **B. The defendants’ motions to dismiss**

5 All defendants move to dismiss this action against them. Ocwen argues that Middleton’s
6 confusing initial filing fails to meet the pleading standard in Rule 8 of the Federal Rules of Civil
7 Procedure (FRCP), so this action must be dismissed.⁹ Carrington claims that it should be
8 released from this action because Middleton did not serve it with process by the 90-day deadline
9 in FRCP 4(m).¹⁰ And the Clark County Recorder’s Office points out that it is not an entity
10 legally capable of being sued because “The State of Nevada has not waived immunity on behalf
11 of its departments of political subdivisions.”¹¹

12 Middleton contends that his filing is being misconstrued. He claims that this is not a
13 lawsuit; he is merely registering consent judgments against Ocwen and Carrington so he can
14 enforce them.¹² He emphasizes this by claiming that the Clerk of Court charged him for a civil
15 action when he only should have been charged the much smaller “miscellaneous filing” fee for
16 his judgment registration and asking for a refund of the difference.¹³

19 ⁸ ECF No. 1 at 3–4.

20 ⁹ ECF No. 12.

21 ¹⁰ ECF No. 34.

22 ¹¹ ECF No. 17 at 2.

23 ¹² ECF No. 32 at 7 (“Plaintiff has already obtained a consent judgment from the Defendant,
evidence of which was provided in his claim, which was not a complaint, but as, titled, a
Registration of Judgment.”).

¹³ ECF No. 3.

1 **C. Middleton’s registration matter must be dismissed because he does not seek to**
2 **register a judgment.**

3 The Full Faith and Credit Clause recognizes that “[a] final judgment in one State, if
4 rendered by a court with adjudicatory authority over the subject matter and persons governed by
5 the judgment, qualifies for recognition throughout the land.”¹⁴ Despite the title of Middleton’s
6 initiating document, he is not seeking to register judgments rendered by a court. His papers are
7 not judgments—they’re not court filings of any kind. These “judgments” consist of three parts.
8 The first is an affidavit prepared and signed by Middleton and purportedly directed to each of the
9 defendants, in which Middleton states that he is seeking a default judgment against them via
10 something he entitles a “notarial protest and certificate of dishonor.” And because these
11 defendants apparently failed to respond to his affidavits, he claims in the second part of the
12 document that they “have Dishonored the NOTICE AND DEMAND, Administrative Remedy of
13 Ervin Middleton,” and that they thus “have admitted the statement, claims, and answers to the
14 inquires by *tacit agreement*,” resulting in an “ADMINISTRATIVE JUDGMENT” that “is *stare*
15 *decisis*, *res judicata* and *collateral estoppel*.”¹⁵ He then provides what appear to be self-created
16 documents entitled “Accounting and True Bill”—one for Ocwen and one for Carrington¹⁶—in
17 which he claims “Amount[s] due for violations of RESPA, TILA, Fraud, Conspiracy,” a triple
18 “Rights Violations Compensation Multiplier,” a quadruple “Punitive Compensation Multiplier,”
19 and assorted other costs and awards.¹⁷ There is no indicia on any of these documents that any
20 court has considered or approved any of them or the process they purport to follow.

21 _____
22 ¹⁴ *Baker by Thomas v. Gen. Motors Corp.*, 522 U.S. 222, 233 (1998).

23 ¹⁵ ECF No. 1 at 18 (emphasis original).

¹⁶ Middleton did not attach an “Accounting and True Bill” for the Recorder’s Office.

¹⁷ See ECF No. 1 at 20 (Carrington), 26 (Ocwen).

1 These documents reflect only an out-of-court process by which Middleton claims he has
2 secured judgments by consent or default (he calls them judgments in estoppel¹⁸) against the
3 Recorder's Office, Ocwen, and Carrington for more than half a million dollars each.¹⁹ Because
4 Middleton's papers are not actually court judgments, he is not entitled to enforce his purported
5 judgments under the Full Faith and Credit Clause²⁰ and the intake clerk properly docketed this
6 case as, and charged the fee for, a civil action.

7 **D. Middleton's filing does not state a plausible claim.**

8 Even when liberally construed as a civil-action complaint, Middleton's initial filing fails
9 to state any plausible claim for relief against any defendant. He has stated no actionable facts
10 against the Recorder's Office whatsoever and, regardless, it is merely a department of Clark
11 County's municipal government and, as a matter of law, it lacks the power to sue or be sued.²¹
12 So, I grant the Clark County Recorder's Office's motion to dismiss,²² and I dismiss Middleton's
13 action against it with prejudice because amendment would be futile.

16 ¹⁸ See ECF No. 1 at 3, ¶ 12.

17 ¹⁹ See *id.* at 4, ¶ 19.

18 ²⁰ Middleton includes as Exhibit 1 to this filing an eight-page "Memorandum of Law for
19 Washington State Notary Publics and Foreign Judgments Based on the Constitution of the
20 United States Based on Full Faith and Credit And the Oath of Office 1.6 Update 1-10-2007," that
21 appears to have been downloaded from the internet. ECF No. 1 at 7–14. To the extent that
22 Middleton offers this document as points and authorities to support his entitlement to enforce his
purported "judgments in estoppel," it fails to offer any legitimate legal support. And its
relevance here is particularly curious considering that Middleton's documents all appear to have
been notarized in Nevada and have no connection to Washington state. See ECF No. 1 at 17, 19,
21, 24, 27, 30, 32.

²¹ See, e.g., *Wayment v. Holmes*, 912 P.2d 816, 819 (Nev. 1996) (noting that "[t]he State of
Nevada has not waived immunity on behalf of its departments of political subdivisions").

²² ECF No. 17.

1 I also dismiss this action against Ocwen and Carrington because Middleton has not
2 shown any basis in law or fact to maintain it. Middleton’s pleading does not contain a single
3 factual allegation detailing any conduct by these lenders. The only hint he offers about that
4 conduct is paragraph 12, which states “Plaintiff has established ‘Judgment in Estoppel’ vs CMS
5 as evidenced by documents already admitted into evidence: Certificate of Non Response,
6 Dishonor and Estoppel, certified by an officer of the court and by the Nevada Secretary of State
7 for CMS (Exhibit 2), OLS (Exhibit 3), and CCRO (Exhibit 4),” combined with paragraph 16, in
8 which he alleges that “Defendants are estopped for failure to respond to original administrative
9 process, and allowing a collateral attack can not be allowed.”²³ From those exhibits, I glean that
10 he theorizes that these entities’ failure to respond to his mailed Affidavits of Notice of Default,
11 Notarial Protest, and Certificate of Dishonor ripened into something he calls administrative
12 judgments in estoppel “in accordance with UCC 3-509.”²⁴

13 Federal Rule of Civil Procedure 8 requires every complaint to contain “[a] short and plain
14 statement of the claim showing that the pleader is entitled to relief.”²⁵ While Rule 8 does not
15 require detailed factual allegations, the properly pled claim must contain enough facts to “state a
16 claim to relief that is plausible on its face.”²⁶ Thus, a complaint must make direct or inferential
17 allegations about “all the material elements necessary to sustain recovery under *some* viable legal
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19 ²³ ECF No. 1 at 3–4.

20 ²⁴ See ECF No. 1 at 19, ¶ 1. Middleton refers to himself in these documents as “Libellant,”
21 which Black’s Law Dictionary defines as “The party who institutes a suit in admiralty or
22 ecclesiastical court by filing a libel.” Black’s Law Dictionary 999 (9th ed. 2009). The term
“libel” “was eliminated with the merging of the Admiralty Rules into the Federal Rules of Civil
Procedure in 1986.” *Id.*

23 ²⁵ FED. R. CIV. P. 8(a)(2); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *Ashcroft v.*
Iqbal, 556 U.S. 662, 678–79 (2009).

²⁶ *Twombly*, 550 U.S. at 570.

1 theory.”²⁷ Middleton’s “Registration of a Judgment” falls far short of doing this. So, even if I
2 were to construe this case as a civil action and Middleton’s initiating document as a complaint,
3 these claims are patently frivolous as they lack an arguable basis in law or fact. I thus dismiss
4 this entire action with prejudice and without leave to amend. Although I recognize that the Ninth
5 Circuit requires liberal amendment, particularly for pro se litigants,²⁸ I dismiss this action
6 without leave to amend because I find it “absolutely clear that the deficiencies of the complaint
7 could not be cured by amendment.”²⁹

8 **E. Other motions**

9 Because I find that this action was not merely a judgment-registration one and it was
10 properly categorized as a civil action, I deny Middleton’s motion for a refund.³⁰ And because I
11 am dismissing this action with prejudice and without leave to amend, I also deny as moot
12 Middleton’s motions to serve the defendants at the court’s expense,³¹ to permit him to file
13 electronically,³² for entry of default,³³ and for judgment on the pleadings.³⁴

18 ²⁷ *Id.* at 562 (quoting *Car Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101, 1106 (7th Cir. 1989))
(emphasis in original).

19 ²⁸ *See, e.g., Lopez v. Smith*, 203 F.3d 1122, 1131 (9th Cir. 2000) (en banc).

20 ²⁹ *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012) (quoting *Schucker v. Rockwood*, 846 F.2d
1202, 1203–04 (9th Cir. 1988)).

21 ³⁰ ECF No. 3.

22 ³¹ ECF No. 5.

23 ³² ECF No. 6.

³³ ECF No. 22.


³⁴ ECF No. 42.

1 **Conclusion**

2 Accordingly, with good cause appearing and no reason to delay, IT IS HEREBY
3 ORDERED that:

- 4 • Middleton's motion for a refund of the filing-fee overcharge [ECF No. 3] is **DENIED**;
- 5 • The defendants' motions to dismiss [ECF Nos. 12, 17, 34] are **GRANTED**; this action
- 6 is **DISMISSED with prejudice and without leave to amend**;
- 7 • All other pending motions [ECF Nos. 5, 6, 22, 42] are **DENIED as moot**;
- 8 • The Clerk of Court is directed to ENTER JUDGMENT accordingly and CLOSE THIS
- 9 CASE.

10 Dated: November 9, 2018

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12 U.S. District Judge Jennifer A. Dorsey

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